



**FINANCIAL SERVICES  
COMMISSION**

# **Fitness & Propriety Guideline**

**POST CONSULTATION PAPER**

Fitness & Propriety Guideline  
**Post Consultation Paper**

---

The Financial Services Commission of Barbados (the “Commission”), as the regulator of non-banking financial services in Barbados, will, from time to time, in accordance with the Financial Services Commission Act, 2010-21, issue guidelines that apply to financial institutions which the Commission (the “Commission”) regulates. The rationale for the guideline and subsequent consultation paper was circulated to the industry for comments in April 2023.

The period for submitting comments has ended, and the Commission has reviewed the comments received. The attached document includes a summary and the Commission’s response to the comments. The guidelines have been finalised, and they, along with the post-consultation document, will be posted on the Commission’s website.

For questions related to the guidelines, kindly submit [info@fsc.gov.bb](mailto:info@fsc.gov.bb).

The Financial Services Commission (FSC) thanks everyone who submitted feedback regarding its Consultation Paper on the draft Fitness & Propriety Guideline 3, applicable to all financial institutions. Outlined below is a summary of key comments received and the FSC’s responses regarding same.

## **Section 1 – Purpose & Scope**

**Feedback:** Respondents sought clarity on whether a financial institution is considered a relevant person under the Guideline.

**FSC Response:** All financial institutions are considered “relevant persons” under the Guideline.

## **Section 2 – Definitions**

### **“Relevant Legislation”**

**Feedback:** Respondents queried why the Financial Institutions Act was omitted from the definition of “Relevant Legislation”.

**FSC Response:** The Financial Institutions Act, Cap 324A was not included in the definition of “Relevant Legislation” because it is administered by the Central Bank of Barbados (“CBB”). Financial institutions that are dually registered or licensed with both CBB and FSC will be required to comply with this Guideline and the CBB’s requirements.

### **“Relevant Person”**

**Feedback:** Respondents expressed some uncertainty regarding the usage of this term throughout the Guideline.

**FSC Response:** Depending on the context of its usage in the Guideline, a relevant person may refer to:

- a) The financial institution itself;

- b) Persons related to that financial institution who are required to be fit and proper, for example, significant shareholders or senior officers; or
- c) Persons registered, licensed, or otherwise regulated by the Commission under the relevant legislation, for example, investment advisers or insurance brokers.

All of the above categories of persons, whether individuals or corporate bodies, are required to maintain compliance with the Guideline.

Circumstances where one relevant person may be required to satisfy the Commission of the fitness and propriety of another relevant person will arise, for example, where a financial institution, such as an insurance company, is required to provide evidence of the fitness and propriety of its Chief Executive Officer (“CEO”). In such an instance, the onus remains on the insurer (a relevant person by definition) to establish to the Commission’s satisfaction that the CEO (another relevant person by definition) meets the fit and proper criteria.

Financial institutions licensed or registered pursuant to the Financial Institutions Act, Cap. 324A are not subject to this Guideline unless they are dually licensed or registered by the Commission as well.

### **“Significant Shareholder”**

Feedback: Respondents suggested a change to the definition of a significant shareholder to 20% interest in a financial institution rather than 10% to be in conformity with AML principles.

FSC Response: The 10% threshold for the definition of a significant shareholder is consistent with the Financial Services Commission Act, 2010-21, as amended.

## **Section 3 – Who Must be Fit & Proper**

Feedback: Respondents expressed concern that to require the directors and senior officers of all controlling or significant shareholders to comply with the Guideline may be too onerous, especially if the shareholder is itself not regulated by the Commission, or the financial institution is part of a large or complex group structure.

FSC Response: Directors and senior officers of controlling or significant shareholders are currently required to submit documentation to evidence their fitness and

propriety on application for registration, or when there are acquisitions of material interest.

The current Guideline is not intended to amplify or add further measures to be complied with.

If the financial institution is part of a group of companies, the Commission will require a chart depicting the corporate structure of the group which identifies all the related entities so that direct and indirect shareholders of the financial institution can be identified, along with their percentage shareholding.

The Commission does not require fit and proper documentation for every direct or indirect shareholder of the financial institution, except where specifically requested.

Instead, the Commission requires fit and proper documentation for every Ultimate Beneficial Owner who holds 10% or more interest in the financial institution.

Please refer to the Commission's Fitness and Propriety Circular and FAQ document published on its website, for further information on fitness and propriety requirements relating to reporting issuers/public companies.

## **Section 4 – Fit & Proper Test**

Feedback: Respondents questioned the relevance of financial soundness to the assessment of fitness and propriety under the Guideline.

FSC Response: Given the nature of financial services offered by relevant persons, financial soundness is a key criterion in the assessment of a relevant person's fitness and propriety. It involves ascertaining that a relevant person has the capability to maintain solvency and is (and has been) under prudent financial control, demonstrated by the relevant person's ability to meet liabilities as they become due.

The documentation required to demonstrate a relevant person's financial soundness will be specified on the respective Individual and Corporate Fitness & Propriety Questionnaires, and will require no more sensitive information than that currently required by the Commission upon application for registration or licensing.

The Commission does not require that financial institutions solicit bank statements or any statement of account from relevant persons who must satisfy fitness and propriety requirements.

**Section 4.2(a)**

Feedback: Respondents expressed uncertainty with the definition of a substantial shareholder.

FSC Response: All sections were amended to state “significant shareholders” rather than “substantial shareholders”.

**Section 4.2(d)**

Feedback: Respondents expressed uncertainty regarding who is expected to underwrite risks regarding the financial soundness criterion.

FSC Response: The underwriting of risk referred to in this section refers to that of the relevant person who is a corporate body. In order to be considered fit and proper, relevant persons (who are corporate bodies) must have the financial capacity to carry out the corporate body’s intended functions, and to underwrite the risk to which the corporate body (not individual shareholders) is exposed.

**Section 4.7(d)**

Feedback: Respondents requested a more specific description of the type of complaint referred to in this section.

FSC Response: This section was amended to state “formal complaint made to a competent authority” rather than just “complaint”, and a definition for “competent authority” was added to the list of definitions (Section 2.16).

**Section 4.7(e)**

Feedback: Respondents indicated that information about a relevant person merely being the subject of disciplinary or criminal proceedings where wrongdoing is yet to be established could be prejudicial.

FSC Response: The Commission wishes to re-iterate that the inability of a relevant person to meet any singular fit and proper criterion does not automatically render that person not fit and proper. The Commission takes a holistic approach to assessing fitness and propriety, and considers all information within the context of each relevant person’s circumstances.

Information related to ongoing disciplinary or criminal proceedings, while not itself determinative of fitness and propriety, may trigger further investigation or prompt the Commission to request more expansive disclosure accordingly.

### **Section 4.13**

**Feedback:** Respondents observed that 4.13(e) and (f) are not applicable for private or investment holdings companies with no personnel, and there would therefore be no need for HR policies or a Fitness & Propriety Policy.

**FSC Response:** Guidance will be provided by the Commission where the requirements will not apply to specified types of entities e.g., private investment/holding companies.

## **Section 5: Obligations of the Financial Institution**

### **Section 5.2**

**Feedback:** Respondents considered there to be a discrepancy between the financial institution being required to assess the fitness and propriety of their relevant persons on an annual basis, while the Commission will only undertake fit and proper assessments every 3 years.

**FSC Response:** Financial institutions are required to assess their relevant persons on an annual basis as part of their internal Fitness & Propriety Policy. This annual assessment would allow detection of changes of circumstance that may affect the fitness and propriety of their relevant persons on a much timelier basis, and facilitates communication of same to the Commission.

This strategy allows more time and opportunity for the financial institution to resolve or otherwise address such changes and their implications on a relevant person's fitness and propriety ahead of the Commission's own assessment, allowing the financial institution to avoid intervention or disciplinary measures by the Commission.

This is separate from the Commission's fitness and propriety assessment, which will be undertaken routinely on a 3-year basis, and under specific circumstances, for example, upon application for initial registration or where there is an acquisition of significant interest in a financial institution.

Feedback: Can a financial institution that is part of a group adopt the Fitness & Propriety Policy of its parent company?

FSC Response: A financial institution that is part of a group of companies can adopt the Fitness & Propriety Policy of its parent company provided that it is compliant with this Guideline.

### **Section 5.4(b)**

Feedback: Respondents requested greater clarity on the meaning of “similar matters” in this section, and commented that conducting checks for criminal or other legal proceedings in relation to a relevant person may be onerous considering the nature of how such checks are conducted in Barbados (in person rather than online).

FSC Response: “Similar matters” refers to various proceedings of a legal, regulatory or professional nature that potentially impact a person’s fitness and propriety.

The financial institution will be expected to have appropriate procedures/systems in place to be able to monitor changes in fitness and propriety based on their operations. For example, entities may implement a requirement for submission of a Police Certificate of Character. Other entities have and use due diligence search engines and may have procedures for periodic checks of those engines. The Commission would assess what measures the company has in place as part of its Fitness & Propriety Policy, and whether it is complying with those measures.

## **Section 6: Assessment of Fitness & Propriety by the Commission**

Feedback: Will financial institutions be required to obtain and submit credit reports regarding its relevant persons to the Commission to facilitate fit and proper assessments?

FSC Response: Credit reports will not be requested as a standard requirement for the fitness and propriety assessment relevant persons. Credit reports may be requested by the Commission for such relevant persons only where some other fitness and propriety criterion is not met in relation to the relevant person’s financial soundness.



In such a case, as part of an enhanced assessment, the Commission may request that the relevant person produce a credit report from an authorised credit bureau registered or licensed in the jurisdiction(s) in which the relevant person has conducted business.

**Feedback:** Respondents requested clarity on the fitness and propriety obligations of the financial institution vs. fit and proper assessments conducted by the Commission.

**FSC Response:** This Section was therefore re-named to demonstrate the clear distinction between fitness and propriety assessments financial institutions are required to undertake as part of their Fitness & Propriety Policy, and fitness and propriety assessments undertaken by the Commission as discussed above.

### **Section 6.8(c)**

**Feedback:** It may be difficult to obtain original or certified copies of older qualifications to satisfy this requirement.

**FSC Response:** Certified copies of qualifications or other documentation are obtained by producing the original document and a copy of that original to a person authorised to certify documents, and having that person certify that the copy is a true copy of the original document. For a list of persons authorised to certify copies of documents, see the Fitness & Propriety FAQ document on the Commission's website.

### **Section 6.8(e)**

**Feedback:** What are the requirements or language required for an Affidavit in lieu of a Certificate of Character?

**FSC Response:** The affidavit must be written in English (or be translated into English by a competent authority), and sworn to by the subject of the fit and proper exercise, and must include:

- a) Full name and address of the individual;
- b) Confirmation that a police certificate of character or its equivalent is not provided by the authorities in the jurisdiction in which they reside(d); and
- c) A sworn statement or affirmation that the individual has not been convicted of any criminal offences nor are they the subject of pending unresolved criminal charges.

Fitness & Propriety Guideline  
**Post Consultation Paper**

---

Feedback: What constitutes a material change and when are they required to be reported to the Commission?

FSC Response: Financial institutions may refer to the Material Change Guideline to be issued by the Commission and which has been submitted for consultation via the Commission's website.

**Section 6.24**

Feedback: Relevant persons should be notified of the nature of the concerns in the written notice from the Commission requiring an interview.

FSC Response: This is a matter of internal policy of the Commission, though the recommendation will be duly considered.